



THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN
~~WILLIAMSON~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard:

Opinion No. 0-5565
Re: Whether or not Senate Bill No. 266, Regular Session, 48th Legislature, with respect to rentals, applies to storage rentals on automobiles and other commodities made upon a monthly basis.

You request a construction of Senate Bill No. 266 of the 48th Legislature, Regular Session, governing rentals with special respect to storage rentals on automobiles and other commodities made upon a monthly basis.

Sections 1, 2 and 3 of Senate Bill No. 266, are as follows:

"Section 1. Hereafter all departments and agencies of the State Government, when rental space is needed for carrying on the essential functions of such agencies or departments of the State Government, shall submit to the State Board of Control a request therefor, giving the type, kind, and size of building needed, together with any other necessary description, and stating the purpose for which it will be used and the need therefor.

"Sec. 2. The State Board of Control, upon receipt of such request, and if the money has been made available to pay the rental thereon, and if, in the discretion of the Board such space is needed, shall forthwith advertise in a newspaper, which has been regularly published and circulated in the city, or town, where such rental space is sought, for bids on such rental space, for the uses indicated and for a period of not to exceed two years. After such bids have been received by the State

Board of Control at its principal office in Austin, Texas, and publicly opened, the award for such rental contract will be made to the lowest and best bidder, and upon such other terms as may be agreed upon. The terms of the contract, together with the notice of the award of the State Board of Control will be submitted to the Attorney General of Texas, who will cause to be prepared and executed in accordance with the terms of the agreement, such contract in quadruplicate; one of which will be kept by each party thereto, one by the State Board of Control, and one by the Attorney General of Texas. The parties to such contract will be the department or agency of the government using the space as lessee and the party renting the space as lessor.

"Sec. 3. Within thirty days after the effective date of this Act, all departments and agencies of the State Government at this time leasing or renting space from any person, firm, or corporation whomsoever, will cause to be prepared and delivered to the State Board of Control in Austin, Texas a copy of any written rental or lease agreement now in force and current, or any statement of any oral understanding upon which any lease or rental public funds are being expended, if such action has not already been taken."

It is the opinion of this department that the Bill does not apply to situations such as those mentioned by you.

The subject -- the essence -- of Senate Bill 266 is the "rental space" when needed by an agency or department of the State government. It contemplates not only the rental contract but it contemplates that the subject matter of the contract -- the space needed -- be the space such as that of a building, room, office, or other quarters, to be occupied by the agency or department, or its employees, in the carrying on of an essential governmental function. In other words, the subject matter of the rental, it is contemplated, will be under the control, for the time being, of the agency or department, as the term "rental" is generally understood. The word "rental" is one of well-understood meaning, and presumptively it was so used by the Legislature. Furthermore, this construction comports with the general purpose of the Act.

Now, the so-called rental for storage of automobiles and other commodities is not a rental at all, within the meaning of the statute. It does not contemplate the taking over of any specific building, room, or space whatsoever, but on the other hand is in its nature a storage contract -- something entirely different from the ordinary rental contract. A storage contract is one for service by the warehouseman, or other owner of storage space, and moreover it does not contemplate any particular room or space -- merely storage.

It is conceivable that such a contract for space could take the form of a rental of space, within the meaning of the statute. Thus, where any department or agency was in need of space for storing records, papers, files, and the like, and the things to be thus stored were so numerous or voluminous as to make a mere contract of storage inadvisable, and a building, room, or definite space therefor preferable, such an arrangement would be a rental, within such necessity would present a fact situation to be determined by the circumstances. We can not be definite at this point beyond the mere statement of the general principle determining the nature of the rental.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Ocie Speer
Ocie Speer
Assistant

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APPROVED SEP 1, 1943
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman